



THE HAWAIIAN AND PACIFIC
RAILWAY COMPANY
LIMITED
PRAYERS FOR STAFF RETIRE



THE MEMORIAL OF THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY (LIMITED.)

To His Excellency The Right Honorable LORD LISGAR, G.C.B., G.C.M.G.,
Governor General of Canada, &c., &c.

IN COUNCIL:

HUMBLY SHEWETH:

1. That your memorialists are a Company, composed for the most part, of capitalists resident in Great Britain, registered in England on the first of March, 1867, as a 'Limited' Company, under an Act of the Imperial Parliament, entitled 'The Companies Act, 1862'; and incorporated by an Act of the Legislature of Nova Scotia (30 Vic., Cap. 36) on the 7th of May, 1867.

Memorialists a co-
porate Company

2. The object for which your memorialists were incorporated, was the construction, and the working, of a portion of one of the sections of the Government Railways of the Province of Nova Scotia, extending from Windsor to Annapolis, a distance of eighty-five miles, under an agreement made between the eminent contractors Messrs. Punchard Barry & Clark, of London, and the Government of the Province of Nova Scotia, on the 22nd of November, 1866.

Object of their
corporation.

3. The capital embarked in the enterprize by your memorialists amounts to £300,000, represented by fifteen thousand shares of £20 each.

Capital invested
them.

4. Your memorialists have, as provided for by their Articles of association, also raised the further sum of £200,000, by the issue of terminable Debentures, carrying interest at the rate of 6 per cent. per annum.

Debenture Debt
incurred by them

5. Your memorialists, when they embarked their capital, had before them the Acts of the Legislature of the Province of Nova Scotia, having reference to the Railway, namely: of the Sessions of 1854, 1864, and 1865, together with the before-mentioned agreement of 22nd of November, 1866; the main points of which bearing on your memorialists' case, they crave leave to quote.

Documents on wh
they were induc
to embark their
capital.

The Act of 1854, 17 Vic., Cap. 1, Legislatue of Nova Scotia, 31st of March, 1854.

*"Preamble. The construction and maintenance of a trunk line of railway from the Har-
bour of Halifax to the frontier of New Brunswick with branch lines extending to the
Harbour of Pictou and to Victoria Beach (near Annapolis) will greatly facilitate the
internal trade of Nova Scotia—will develop her resources—enlarge her Revenue and
open more frequent and easy communication with the neighbouring Provinces and States."*

*Section 1. "The lines of Railway to be constructed under the provisions of this Act shall
"be Public Provincial Works."*

*Section 4. "The construction and management of such Railways shall be under the charge
"of six Commissioners."*

Section 5. "The Commissioners shall build such Railways by tender and contract."

*Section 10. "The Commissioners or Contractors are authorized to enter upon and take
"possession of any Lands required for the track of the Railways or for Stations."*

Section 16. "The Commissioners or Contractors may make an agreement in writing with the Proprietors of Lands so taken for damages and fencing."

Section 17. "Where no agreement shall be made appraisers shall make a valuation as to the damages to lands and fencing."

Section 18. "In making such arrangement or appraisal the benefit, likely to be derived by the Proprietor from the Railway running through his Land, shall be taken into consideration, and the damages thereby reduced or extinguished."

Section 19. "The monies payable for such Lands and fencing shall form a county charge."

Section 20. "Whenever the railways or any portion of them shall be completed it shall be lawful for the Governor in Council to make such arrangements as may be suitable for working the railways as one line by a common management or for working the trunk line and branches by separate Commissioners."

Another Act of the same Session, 17 Vic., Cap. 2, Legislature of Nova Scotia, 31st of March, 1864.

Section 1. "It shall be lawful for the Governor, by and with the advice of the Executive Council, to contract a Loan, on the pledge of the Revenues of this province, whether arising from the duties upon imports, the sale of Crown Lands, the Royalty paid by miners or the tolls to be collected on the Railways constructed with the monies to be borrowed under this Act."

Section 2. "Certificates of debt to be called Debentures bearing interest at six per cent may be issued from time to time, at par, or at such premium as the same may command, as the Railways proceed."

Section 3. "The principal of such Debentures shall be paid in full, at the expiration of Twenty years from the date of their respective issues."

Section 4. "The whole of the Revenues to arise from the receipts of Tolls on such Railways shall, after the expense of working and maintenance have been paid, be applied towards the payment of interest on the Debentures, and the surplus shall form a Reserve fund for the redemption of the Loan."

The Revised Statutes of 1864, 27 Vic., Cap. 70, Legislature of Nova Scotia, 10th of May, 1864, included, among others, a chapter devoted wholly to the subject of Railways. In it the provisions of the Act of 1854, before referred to, were re-enacted.

The Act of 1865, 27 Vic., Cap. 13, Legislature of Nova Scotia, 2nd of May, 1865.

Section 1. "The Chief Commissioner of Railways, by direction and authority of the Governor in Council, may contract for and on behalf of the Province, with any responsible party or parties, for the construction of the following Sections of the Provincial Railway, that is to say, from Truro to the boundary line to New Brunswick, and from Windsor to Annapolis; and for the payment of the subventions, on the terms and under the provisions and stipulations hereinafter set forth and contained. The location of the lines of the said Railways to be subject to the approval of the Governor in Council."

Section 2. "The Contractors for the sections first mentioned (i. e. between Truro and Amherst), to receive a subvention, of not more than 4 per cent. per annum for twenty years on \$40,000 per mile of the whole length of said section, and the Provincial Government to take on behalf of the Province stock in the said undertaking, with such contractors, to the extent of \$400,000."

Section 3. "The Contractor or Contractors for the section last mentioned (viz.—between Windsor and Annapolis) to receive a subvention of not more than 4 per cent. per annum for twenty years on \$24,000 per mile of the whole length of the said section, with the exception of a bridge, viaduct, or other erection suitable for a Railway across the River Avon at or near Windsor, the latter to be built at the expense of the Province."

Section 4. "The first annual payment of such subventions to fall due, and to be made, at a period not less than twelve months after the bona fide commencement to build such sections respectively."

Section 5. *The Governor in Council may, at any time after such contracts or either of them are entered into, by an Order in Council, declare that the subventions or either of them shall cease, and at what time, and, in lieu of such subventions or either of them, pay to the Contractor or Contractors, the amount or balance, as the case may be, of such subvention, or either of them, capitalized either in cash or Provincial Debentures."*

Section 6. *"The Governor in Council as soon as a contract has been entered into for building the said section last mentioned from Windsor to Annapolis, may make provision, either by contract or otherwise, for the building of a suitable bridge, viaduct, or other erection across the said Avon River, at or near Windsor aforesaid."*

Section 7. *"The Governor in Council may at any time, before or after the said sections, or either of them are or is completed, by an Order in Council, assume on behalf of the Province, the ownership of the said sections or either of them, by paying to the owners thereof the value of the same, to be ascertained as hereinafter provided, either in cash or Provincial Debentures, at the option of the Governor in Council."*

Section 8. *"The amount to be paid under the next preceding section shall be ascertained by the decision of three arbitrators; one of whom to be appointed by the Governor in Council; one by the owner or owners of the section, and one by the principal Secretary of State for the Colonies."*

Section 10. *"The Governor, by and with the advice of the Executive Council, may, for the purposes of this Act, contract a loan on the pledge of the revenues of this Province, whether arising from the duties upon imports, the sale of crown lands, the royalty paid upon minerals, or the tolls to be collected on the railways owned by the Province."*

Section 13. *The provisions of chapter 70 of the Revised Statutes (1864) referring to Government Railways, were, with certain exceptions in cases where not bearing on the subject, made applicable to the railways to be built under this Act, the terms 'Commissioners,' and 'Railway Department' therein used, were respectively to include the 'contractors or owners of these Railways,' and 'property belonging to the contractors or owners of the said section of Railways.'*

Section 14. *"The Chief Engineer of Railways shall report to the Government on the route or routes proposed, and during the construction of the said lines of railway respectively, shall have power at any time, and at all times, to enter upon the same, and examine the works; and it shall be his duty to report to the Government, from time to time the state and condition of such works; and any failure in the execution, or in carrying out any of the provisions of such contracts, and generally to watch over the interests of the Province in reference thereto."*

Section 15. *"Contractors shall furnish names of claimants for damages, instead of Board of Railway Commissioners, as mentioned in section 47 of said Chapter, and shall do all Acts in said section provided to be done by the Board of Commissioners."*

Section 16. *The moneys payable for lands for the sections hereinbefore mentioned shall form a county charge."*

Section 18. *"The contracts to be made under this Act, shall contain stipulations and provisions for the regulation of the tolls and rates for passengers and freight; the carriage of mails, troops, munitions of war, and other government property on the said lines, and generally for guarding the interests of the Province."*

The agreement of 22nd of November, 1866, made with Messrs. Punchard Barry & Clark.

Section 1. *"Whereas an Act of the Legislature of Nova Scotia was passed on or about the second day of May, one thousand eight hundred and sixty-five, entitled 'An Act to provide for the construction of two other sections of Provincial Railway,' and by such Act provisions were made for the construction of a certain railway from Truro to the boundary line of New Brunswick, and of a certain other railway from Windsor to Annapolis."*

Section 2. *"And whereas, in pursuance of the provisions of the said Act, a negotiation has been entered into between the said parties hereto, having for its object an arrangement by which the said parties of the second part, or their assigns, shall undertake the construction, and (although not authorized by the Act) working of the said section of the said railway from Windsor to Annapolis, under the provisions of the said Act, subject to the terms and conditions hereinafter mentioned."*

Section 3. "The above recited Act (namely, of 1866) shall be the basis of this agreement, so far as it relates hereto, except so far as the same may by this agreement be modified."

The Contractors in consideration of the premises, and of the agreement hereinafter contained, agree to construct the said railway from, at, or near the present Windsor Station, to Annapolis, or such variations thereof as may be agreed upon between the parties hereto. The said works to be diligently prosecuted, and fully completed, and ready for traffic on or before the first day of December, 1869. The rails to be of good quality, and to be not less than 42 lbs. weight per yard. The stations and depots to be not less than ten in number; and the said parties of the second part (i.e. contractors) to effectually manage and operate the said railway when completed, at the proper expenses, at such rates, tolls, and charges as hereinafter provided (see clause 5) for their own benefit, that is, to carry Her Majesty's servants at 2 cents per mile, and their children of from 8 to 12 years of age at half price, and those under 8 free; officers to carry one hundred weight of baggage, and privates half that quantity; excess baggage to be paid for at 80 cents per hundred weight per 100 miles; also, to carry Her Majesty's mails at a rate of charges to be agreed upon by the parties hereto, or by an umpire to be chosen by them in the usual way in case of difference, prior to the opening of the railway; and in case an umpire cannot be agreed upon, and such charges fixed by him, then such charges shall not exceed the rates charged for such service in the Province of Canada.

Section 5. "The contractors to erect and build over the Avon River, near Windsor, a good and sufficient bridge."

Section 6. "The subvention, as sanctioned by the Legislature, shall be capitalized at the agreed sum of £185,000, sterling, instead of the payment of the sum of sixteen thousand three hundred and twenty pounds, sterling, per annum, and the Provincial Bonds or Debentures for the above sum, issued in the ordinary form, bearing 6 per cent. interest, shall be delivered, at par, to the parties of the second part, or their assigns or nominees; but such bonds shall only be delivered to the said last mentioned parties, with the coupons attached, bearing interest from the preceding first of January, or first of July, as the case may be, prior to such delivery, according to the amounts from time to time to be expended by them in the construction of the said railway, or work, according to a scale of prices to be agreed upon: the amounts of such expenditure to be certified monthly by the Chief Engineer, or his Resident Engineer of the parties of the second part (i.e. the concessionaires), and concurred in by the Chief Railway Engineer of the Province, or any other Engineer, to be appointed by the Governor of the Province, and that such delivery to the said parties shall be within fourteen days from the date of such certificate; but the amount of such bonds shall never exceed 50 per cent. of the whole amount expended, according to the said monthly certificates, and the balance, if any, shall be paid when the railway is completed, and opened up for traffic."

Section 7. "All lands required for the railway track and appurtenances, shall be provided gratis as under the provisions of section 11, chapter 70 of the Revised Statutes," (the said section 11 providing that the commissioners or contractors are authorized to enter upon, and take possession of any lands required for the track of the railways, or for stations; and they shall lay off the same by metes and bounds, and record a description and plan thereof in the Registry of Deeds for the County in which the lands are situate, and the same shall operate as a dedication to the public of such lands: the lands so taken shall not be less than four rods—i.e. 65½ feet,—or more than six rods—i.e. 97 feet—in breadth, for the track, exclusive of slopes of excavations, and of embankments, except where it may be deemed advisable to alter the line or level of any public or private carriage road, or divert any stream or river, in which case it shall be competent for the commissioners to take any such further quantity as may be found necessary for such purposes; also at each station a sufficient extent for depot and other station purposes; provided always, that excepting at the termini or junction of the railways, the quantity so appropriated shall not exceed five acres.")

Section 8. "The contractors shall be entitled to make and enforce a tariff of charges for fares and freight (except as aforesaid,) to be mutually agreed upon between the parties, prior to the completion of the said railway, and opening the same for traffic."

Section 9. "All materials and stores required for the construction and working of the railway, shall be entitled to a drawback for the amount of import duties paid thereon by the said parties of the second part (i.e. the concessionaires)."

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Section 11. "And it is mutually agreed, that prior to the opening of the railroad, a traffic arrangement shall be made between the said parties of the second part and the Provincial Government, for the mutual use and employment of their respective lines of railway between Halifax and Windsor, and Windsor and Annapolis, including running powers, or for the joint operations thereof on equitable terms, to be settled by two arbitrators to be chosen by the said parties in the usual way in case of difference; and in case of failure of said arbitrators to make an award, or to choose an umpire in the premises, it is further agreed that the said traffic arrangement shall be settled by such third person, together with one or both of the said arbitrators as the Board of Trade in England shall, on the application of either of the parties hereto for that purpose, appoint."

Section 12. "The Government of the said Province shall and will well and truly pay, for the building and maintenance of the said bridge across the said River Avon, the sum of £32,000."

Section 13. "And it is further mutually agreed between the said parties that the said line of railway, including the said bridge, viaduct, aboiteau, or other suitable erection across the said River Avon, with all and singular the appurtenances when built, shall be the property of the said parties of the second part (i.e. the contractors,) or their assigns, and shall be operated, managed, and up held by them, at their own proper costs and charges."

Section 15. "And it is further mutually agreed, that for the purpose of carrying out the agreement, the said parties of the second part, or their assigns, shall have power to form a joint stock company, to be incorporated by Act of Parliament of Nova Scotia, and when and so soon as such company is formed, and capital subscribed to the satisfaction of the said Chief Commissioner of Railways of the Province of Nova Scotia, the said intended company, so to be formed, shall possess the said railway and works for the purpose aforesaid, subject to the terms of this agreement."

Several Acts have since been passed by the Legislature of Nova Scotia, with the view of reconciling the anomalies apparent in the before recited Acts and Agreement; but though they in some respects support, still more strongly, the claims of your memorialists, yet as it was on the faith of the Acts and the Agreement before quoted (no other Acts having then been passed) that, your memorialists were induced to embark their capital, they rest their case upon, and confine their remarks to, these.

6. Your memorialists were led to believe that they were embarking in the construction of a Government Railroad; for all the Acts expressly designated it as a *Public Provincial Work*. The Acts further declared, that it was designed to benefit the Province, and to open up through communication with the neighbouring Provinces and States. It appeared to your memorialists, an important portion of the Government system of Railroads, designed to form the Main Trunk of the best through route—as it undoubtedly is—between Halifax, and St. John, New Brunswick. Your memorialists also observed that the Government were to locate the line; that the Counties through which it passed were to provide the land; that such provision was to operate *as a dedication to the public*; that the Government Engineer was to supervise the work of construction, and to certify the value thereof. Private enterprise, it appeared to your memorialists, was only required to provide a portion of the capital required for the work of construction, the Government advancing £188,600 towards the cost. And in reliance on the good faith of the Government, your memorialists concurred in the condition, which required them, so long as they might continue to work the Railroad, to carry the Government troops, baggage, stores, and mails at defined and very low rates; and in the restrictions which bound them, on the one hand, to obtain the concurrence of the Government to the tolls to be charged to the public, and on the other, not to sell the line, except to the Government themselves, who reserved the power to enter into possession of the Railroad at any time on payment of the cost.

Interpretation of the Documents.

Memorialists relied
on protection of
the Government.

7. Your memorialists relied therefore upon the Government both as to the work of construction, and as to the remunerative working of the Railroad when constructed. They also believed that the Government would secure to them a fair interest upon their capital; and they further believed that as the Government could, and no doubt would, take possession of the property whenever it became remunerative enough to tempt them to do so, so also they would take to the property whenever it failed to yield a fair interest on the money embarked in it, and especially so if that failure was brought about by any action of the Government.

Memorialists completed their part
of the contract.

8. Your memorialists immediately on their incorporation, and on the faith of the Acts and Agreement before quoted, provided the capital for, and proceeded vigorously with, the construction of the Railroad. The final report of the Government Engineer, presented to the Legislature of Nova Scotia on the 25th of January, 1870, will show, that your memorialists more than complied with the terms of their contract, both in letter and in spirit. The following extracts from that document will, however, suffice to demonstrate this.

Grades and Curves.

"In this respect the Windsor and Annapolis Railway compares very favorably with the Nova Scotia Railways, particularly with the Windsor Branch, over which all traffic for the western counties from Halifax must be carried."

Earthwork.

"The width of cuttings averages about eighteen feet, but in many of the clay cuttings this has been increased. The formation width of embankments is from fifteen to sixteen feet. Nearly all the embankments were made by carts, and are standing well."

The Avon Bridge.*

"The whole of the masonry is built of good sound sandstone and Portland cement, is first class quarry faced ashlar, well backed with flat bedded stone, and the whole of the joints and interstices filled with cement." "Great care was taken in its construction and erection." "Every arrangement was made for the vigorous prosecution of the work." "The iron work always arrived from England before it was required; and in order to avoid the risk of being behind time, the last two large spans were sent from England by the Inman Steamships. Thus in about two years this important work was completed."

Timber Bridges.

"The timber used in the construction of all the bridges is the best the country affords, and is principally black spruce. Every precaution was taken by the Contractors to have all piles well driven. All the bridges have been thoroughly tested by the passage of heavy trains, and have stood well."

Ballasting.

"By the schedule a quantity of ballast, not less than two thousand five hundred cubic yards to the mile, was required. This has generally been exceeded."

Permanent Way.

"The whole is laid with the \perp rail of two patterns, one weighing sixty-seven pounds to the yard—the heaviest rail laid in the country; the other weighing fifty pounds to the yard. The sleepers are principally of black spruce, nine feet long, ten inches wide, and five inches deep, half round, or flatted, and the rails are carefully bedded in each. There are over two hundred thousand sleepers in the road. The trains run very smoothly, with remarkable freedom from oscillation, even when a good rate of speed is maintained; and the fish plate gives a good smooth running road."

Stations.

"The contract specified that the Contractors were to provide ten stations. There

* This your memorialists might have built of wood at a considerable saving of expense to them.

† It will be observed that your memorialists were only required to lay down rails weighing forty-two pounds to the yard.

"are now twenty-one on the line. Of these, the principal ones are at Kentville and Annapolis. At both these stations, in addition to the platform and siding accommodation, there are roomy engine sheds, each to hold three engines, turn-tables, &c. At Kentville a large addition has been made to the engine shed for the purposes of a work shop."

Annapolis Pier.

"At Annapolis a goods shed has been erected, and a first rate timber pier, built with crib work well ballasted." "It is four hundred and fifty feet long." "It has a floating landing stage, and is a very substantial work. This was not required by the contract."

Rolling Stock.

"The quantity in list annexed has been provided by the Contractors. Six of the engines were sent out from England, and are specially designed for heavy work. They burn either coal or wood, weigh about fifty tons, and in their design the latest improvements were introduced. The boilers are remarkable for their strength."

Completion of the Line.

"On the 18th of August, 1869, (viz., four months before the contract time,) seventy miles of line, from the Gaspereaux to Annapolis, were formally opened by the Governor General. Since that time a portion of the line between Horton and Wolfville has, however, been damaged by the breaking of the dykes from high tides. The injury done was immediately repaired by the Company, so that in December everything was ready for the opening, and on the 18th of December, a few days later than the contract time, the whole road was open for traffic."

9. Your memorialists having thus completed the construction of the Railroad, proceeded to operate and manage it in the best possible manner. But, though they have continued to work it with energy and regularity now for more than eighteen months, it is with regret that they find, as already communicated to the Government, that the income, after payment of expenses, is insufficient, not only to permit of any return upon your memorialists' capital, but also of the payment of any considerable portion of the interest upon the debenture debt. Your memorialists are also, as a consequence, unable to raise the capital with which to discharge the principal of the debenture debt; and they have therefore been obliged to embark further capital, and incur further liabilities, together amounting to about £50,000, in order to provide for the wants of the Railway, and to meet the accruing debenture interest: and your memorialists venture to submit, as some proof that this deficiency is not due to want of management on their part, that the result of the working of the 145 miles of Government Railways in Nova Scotia in the year ending the 30th of June, 1869, was a gross income of \$272,237, obtained upon an expenditure of \$268,560. (Vide Appendix No. 17 to the General Report of the Minister of Public Works for the year ending 30th of June, 1869.) Whilst in the preceeding year, the income was but \$253,994, obtained upon an expenditure of \$255,530.

Memorialists have continued to work the line. Result unsatisfactory.

10. Your memorialists, under these circumstances, feel themselves compelled, with great regret, to state that they cannot offer to continue to work the Railroad under the present unsatisfactory arrangements with the Government; and they therefore throw themselves upon the protection of the Government, to which they humbly submit they are entitled.

Memorialists throw themselves upon the protection of the Government.

11. Your memorialists venture to submit, that their embarrassments have been greatly increased by the action of the Dominion Government, (who have in this matter become the successors of the Government of the Province of Nova Scotia), who in ignorance, doubtless, of the circumstances under which your memorialists were led to embark their capital in the Railroad, have not only deprived your memorialists of all protection and support, but also denied

Embarrassments increased by action of Government.

* But for the breaking of the dykes, over which your memorialists had no control, the whole of the road would have been opened considerably before the contract time.

them rights and facilities specifically conceded by the Legislature of the Province of Nova Scotia, and have further fostered and subsidized rival enterprises contrary to the spirit and intention of the agreement entered into with that Legislature.

Confederation has altered the views of the Government, and made them competitors.

12. Your memorialists are impressed with the belief that the lukewarm, and even hostile, attitude assumed by the Government towards them, has arisen in the main with Confederation, which has made the Government interest in the Intercolonial line of paramount importance. At the time when the Annapolis line was first designed, the Government of the Province of Nova Scotia intended to construct, own, and work the line to Amherst, on the New Brunswick frontier, as well as that to Annapolis, on the Bay of Fundy; *their* interest, therefore was, if anything, greater in the Annapolis route than in the Amherst route,

the distance from Halifax to Amherst being 122 miles,
whilst that to Annapolis was 129 miles:

And even when in 1865 the Act was passed authorizing the construction of the lines from Windsor to Annapolis, and from Truro to Amherst by private enterprise, the interest of the Government, viewed in its narrowest and most mercenary light, was but a trifle greater in the Amherst route, seeing that the distance which would then have had to be traversed over the Government lines proper, would have been

by the Annapolis route:

Halifax to Windsor, 45 miles, and

by the Amherst route:

Halifax to Truro, 61 miles;

And as it was then clearly the intention of the Government to acquire both the Windsor and Annapolis, and Truro and Amherst Railroads, which, for financial reasons, were at that time designed to be made by private enterprise, in the first instance; the *ultimate* interest of the Government in the two routes was, as before stated, somewhat greater in the Annapolis than in the Amherst route. By the Act of Confederation, the interest of the Government has become absorbed in the Amherst route. In the first place the Railroad from Truro to Amherst, which in 1865 was to have been made by private enterprise in the same way as the Windsor and Annapolis Railroad, was incorporated into, and made part of the Intercolonial system, which at once gave the Government a preponderating interest in the Amherst route; the interest in the Amherst route being thereby extended from

Halifax to Amherst,

122 miles,

whilst their interest in the Annapolis route remained confined to the distance between

Halifax and Windsor—viz.:—

45 miles.

In the second place Confederation still further increased the preponderance of interest in the Amherst route, for by it the whole Intercolonial system from Halifax to Riviere de Loup, and from Shediac to St. John, 498 miles, has become the property of the United or Dominion Government, so that it is now the policy of the Government, as has been stated by its officers, to crush out the opposition of the Windsor and Annapolis line.

Public and private grounds why Memorialists should be protected.

13. Your memorialists, however, submit that such considerations cannot weigh with a Government so enlightened as that of the Dominion, when once they have the circumstances brought to their notice. Your memorialists submit, that, on the grounds of justice and equity, the Government are bound either to protect your memorialists, or to exercise the right of purchase, which they have; and further, that on public grounds, the Railroad deserves the utmost support from the Governments, as being a great benefit to the Provinces, both of Nova Scotia and New Brunswick. The Superintendent of the

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Nova Scotia Railways, in his Report of October, 1870, to the Minister of Public Works, speaking of the Windsor and Annapolis Railway, states—

“When this line was opened for traffic, the steamer plying between St. John, N. B., and Windsor, N. S., during the summer months, was withdrawn from the route, and placed on the route between St. John and Annapolis, connecting with the railway at the latter port. By this arrangement a regular communication was kept up during the winter months, between Nova Scotia and New Brunswick, thereby supplying a want long and seriously felt in both Provinces.”

But beyond this, it is a fact, that the Revenues, and the value of lands and all other property, in the Counties through which the Railway runs, have been doubled, and even trebled, since the projection of the Railway. And though your memorialists admit that for military purposes, and as a means of communication with the more distant portions of the Dominion, the Inter-colonial Railroad is of great value: yet for the more important purposes of trade and commerce, the Windsor and Annapolis Railroad supplies, not only a great and pressing local want of the western counties of the Province of Nova Scotia, but affords a route shorter by 84 miles, more expeditious, and considerably cheaper than the route via Amherst, between those two most important centres of trade—Halifax and St. John, New Brunswick.

14. Your memorialists further submit, that apart from any hopes of assistance to which they may have been led to look forward, the government contribution of £188,600 was most inadequate, amounting as it did to but £2,200 per mile, out of a total cost of upwards of £9,000 per mile.* Your memorialists also submit that the subvention sanctioned by the Act of 1865, viz.—of 4 per cent. on \$24,000 per mile, equivalent to a total subvention of £16,320, sterling, per annum, although terminable in twenty years, would have been more advantageous to your memorialists; and further, that if such subvention had been realized in the terms of clause 5 of that Act, the capitalized sum to which your memorialists would have been entitled would have been £326,400. Your memorialists further submit that even the original subvention was very small, when compared with that offered for the construction of the Railroad between Truro and Amherst, which amounted to 4 per cent. on \$40,000 per mile, being equivalent to an annual payment of £19,200, sterling, for twenty years, besides which the Government granted a subscription of \$400,000, or £80,000, sterling, towards its cost; whilst on the 4th of March, 1864, the then Provincial Secretary of the Province of Nova Scotia, in a letter written by him to the European and North American Railway Company (vide Appendix No. 7 to the Journal of the House of Assembly of Nova Scotia for the year 1865) offered a *perpetual subvention* of £16,000, sterling, to facilitate the construction of the same Railroad.

15. Your memorialists would humbly beg to point out that numerous unsuccessful attempts were made to induce capitalists to embark in the enterprise, even on terms much more advantageous than those granted to your memorialists. Before your memorialists were led to embark their capital, an agreement had been entered into with the Contractors, Geo. Knight & Co., of London; and on the 14th of March, 1866, an Act was passed by the Nova Scotia Legislature, incorporating a company, with the object of giving effect thereto, a clause being inserted, however, providing that

“This Act shall cease and determine if the railroad herein contemplated and mentioned shall not be effectually commenced and vigorously prosecuted within six months from the passing hereof.”

Insufficiency of original grant.

Failure of previous contractor.

* The one hundred and forty-five miles of Railroad constructed by the Government of Nova Scotia cost \$6,791,264, or equal to \$46,837, or £9,367, sterling, per mile. (Vide Appendix No. 17 to the General Report of the Minister of Public Works, 1869.)

Another clause also provided

"That the amount of the subvention to be paid hereunder shall be reckoned on "eighty-five miles or £16,320 sterling per annum to be paid half yearly in London the "first payment thereof to fall due six months after the commencement of the work."

And yet on these more favorable terms the arrangement fell through from the inability of those contractors to give effect to it. As showing further the difficulty experienced by the Province in inducing capitalists to embark in the enterprise, they venture to refer to the Report of the Chief Commissioner of the Government Railways of Nova Scotia, bearing date the 31st of October, 1866. (Vide Appendix No. 11 to the Journal of House of Assembly of Nova Scotia, 1867,) which contains the following paragraphs:

"I regret to say that owing to the Financial panic, which occurred in England during "the early part of the present season under which several of the most noted railway "firms succumbed, and which spread general distrust throughout money circles in Eng- "land and on the Continent, the parties who contracted to build the Windsor and An- "napolis railroad were unable to fulfill their engagement." "The Honorable Provincial "Secretary and other members of the Government who have been in London since "July last on other important business, have been indefatigable in their exertions on "behalf of this Line. I think I may say this, that the people of the Western part of "the Province may rely upon some means being found to push on the work with vigor "during the ensuing year. The Government is virtually committed to the under- "taking and will not see it abandoned."

Financial pressure
in Province.

16. Your memorialists also submit, that their interests were most seriously affected by the pressure on the financial affairs of the Province, at the time they embarked in the enterprise; of the 288 miles of Railroad sanctioned in 1854, but 95 miles had been completed; yet the debt of the Province had increased to nearly five million of dollars. And it appears from a minute of the Chief Engineer of the Government Railways of the 10th of December, 1864, (vide Appendix No. 7 of the Journals of the House of Assembly of Nova Scotia, 1865,) that considerable difficulty was experienced in providing the capital, to secure the completion of the Windsor and Annapolis Railroad, after an adequate provision was made for the completion of the Pictou branch, without making the debt of the Province to exceed the figure of eight million dollars, with which it had been agreed the Province should enter the Dominion. This minute is as follows:

"Nova Scotia Railway.

"The Government of Nova Scotia desires to secure the construction of a Railway "from Truro to Moncton; this, forming part of the Intercolonial, would be built at the "expense of the United Provinces. In anticipation of an union at an early date, this "line may enter into a general arrangement now proposed and its construction be com- "menced under the subvention resolution of last session.* The Government desire to "secure the construction and completion of a branch to Pictou, and a branch to An- "napolis, for a sum which added to the present debt of the province would not "exceed \$8,000,000
"Present debt 4,858,547

8,141,458

"Pictou line estimated to cost. 2,000,000

\$1,141,458

"The balance \$1,141,458 for the Annapolis line, would not at present be available "and this work would have to be commenced under the subvention resolution passed "by the Legislature last session."

*The Resolution above referred to was passed by the Honorable the House of Assembly of Nova Scotia on the 11th of April, 1864, and was as follows:—

"Resolved, That the Executive Government be authorised to secure the construction of the railroad from Truro

"On the Union of the Provinces, the existing railways, and the Pictou extension, will belong to the Confederation Government. In the meantime, the Government of Nova Scotia, in order to facilitate arrangements with parties disposed to carry out these extensions, will be disposed to lease these lines, receiving therefor the actual *net earnings* until the Union of the Provinces be effected. Upon the Union of the Provinces these railways to be held under the Confederate Government upon such equitable terms as may be agreed upon. In the event of the Annapolis line, being completed before the Union of the Provinces is effected, it will be operated in connexion with the other lines and under the same management the actual receipts of the whole to be allotted as under. After the Union a similar equitable arrangement to be made.

"Lines constructed.....93 miles }	143
"Pictou line.....50 "	85
"Annapolis85 "	85
	<hr/>
	228
	<hr/>
	228

"Due to the Province $\frac{1}{3}$ of net earnings

"Do. Annapolis line $\frac{1}{3}$ do. do.

"In the construction of these lines the Province to furnish right of way and fencing free, and materials for construction to be carried on existing lines free of charge (handling not included.) In the Union of the Provinces the balance, \$1,141,453, may be paid for the Annapolis line in lieu of the 20 years' annual bonus of £240 per mile under the subvention resolution.

"The proposed arrangements embrace the following points:

- "1. The working of existing lines in the Province, and all lines to be constructed, under one management on equitable terms."
- "2. The building of the Annapolis road under existing Legislative enactments."
- "3. The commencement of the Truro and Moncton sections under the authority of the legislation already obtained."
- "4. The completion of the branch to Pictou and Annapolis, for such a sum as will allow Nova Scotia to enter the Union with a debt not exceeding \$5,000,000."

This document, though ambiguous in some respects, shows conclusively that in order to conform to the terms of the proposed Confederation, and at the same time, secure the commencement of the system of railways which the people of the Province were eager to have completed.

the Annapolis line, of 85 miles, was to have allotted to it, but.....\$1,141,453 = \$13,429 per mile, whilst the Pictou line, of only 50 miles, which was to be made by the Government themselves, was to have allotted to it.....\$2,000,000 = \$40,000 per mile, and assuming the cost of the 95 miles of line, then completed by the Government, to be represented by the then debt of \$4,858,547, they cost\$51,142 per mile.

The arrangements shadowed forth in this document, were evidently intended to bridge over the gap which existed between the completion of the Railways and Confederation: for the same clause which provides that the line from Truro to Moncton was to be commenced under the subvention resolution passed by the House of Assembly, also states that it was to be made a part of the Inter-colonial, and constructed at the expense of the United Provinces: and so again it was provided that the Annapolis line should be begun under the subvention resolution, and afterwards re-arranged after the Province entered the Union;

"or from the point of junction with the main line to the border of New Brunswick, through the agency of any responsible company, provided no greater liability is incurred than 4 per cent. per annum, upon a capital of £10,000, currency, per mile, for a period not to exceed twenty years; and provided connection is thereby secured with the railroad from St. John to Shediac; and that the Government be authorized to procure the construction of the line west of Windsor, in the same manner, to the same extent of 4 per cent. on a capital of £6,000 per mile."

whilst so far as concerned the Pictou branch, the allotment was, for some reason not explained, made fairly ample and definite.

Effect if the Government had constructed the line.

17. Your memorialists would further point out, that had the Government carried out their original intention of constructing, owning, and working the Windsor and Annapolis line themselves, it would, even if it had not cost them more than your memorialists have paid for it, have cost them £770,600;* the annual interest on which, at 6 per cent. per annum—the then borrowing rate of the Province of Nova Scotia—would have amounted to £46,236; whereas the Province now, having all the same advantages from the Railroad, only pays £13,236 per annum.

Refusal of Government to admit rights specifically conceded to Memorialists.

18. Your memorialists humbly beg, further, to point out some of the more important instances in which the Government have infringed the specific conditions of the Acts and Agreement before quoted.

Firstly,

and most importantly, they have refused to allow your memorialists to exercise the rights conferred by clause 11 of the Agreement, which provides—

“That prior to the opening of the railroad a traffic arrangement shall be made between the said parties of the second part (viz.—the contractors), and the Provincial Government, for the mutual use and employment of their respective lines of railway between Halifax and Windsor, and Windsor and Annapolis, including running powers, or for the joint operations thereof, on equitable terms, to be settled by two arbitrators.”

Your memorialists, several months before the line was completed, applied, through their Manager, to the then Minister of Public Works, at Ottawa, as to the exercise of the running power into Halifax, when the Minister intimated that he intended to visit Nova Scotia, and would then look into the matter. The Minister subsequently made the promised visit, and then declined to act in the matter. At this time the line was rapidly approaching completion, and the Manager, failing in his endeavours to obtain arrangements for the exercise of the powers, entered into a temporary arrangement with the then General Superintendent of the Government Railways, for the interchange of traffic. This arrangement, it was distinctly understood, was to be provisional only. Your memorialists need hardly say, that these running powers are essential for the accommodation and developement of the through traffic; without such powers, your memorialists are quite unable to make the arrangements necessary for the developement of that traffic, upon which the success of the Windsor and Annapolis Railway must always largely depend.

Secondly,

They have imposed upon your memorialists the payment of duties upon materials and stores imported for the working of the Railway, in direct violation of the provisions of clause 9 of the agreement, which provides—

“That all materials and stores required for the construction and working of the railway shall be entitled to a drawback of the amount of import duties paid thereon.”

Thirdly,

They have allowed your memorialists to be assessed for local taxes, from which your memorialists, as owning a Public Provincial Work,

* The £770,600 given above, as the cost of the line, is made up as follows:—

Government contribution	£188,600	0	0
Capital of W. and A. Company	300,000	0	0
Debentures and floating debt	250,000	0	0
Cost of Avon Bridge	82,000	0	0

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were to be exempt, under the Revised Statutes of Nova Scotia of 1864, 28 Vic., Cap. 45, Section 16, which provides—

“The following property shall be exempt from taxation:—The Provincial Penitentiary, and the lands attached thereto. The Provincial Lunatic Asylum, and the lands attached thereto. The Provincial Railway, Rolling Stock, and Railway Stations, and lands attached thereto, or to the Railway.”

Your memorialists having submitted this question to the Attorney General of the Province of Nova Scotia, they beg to quote from his opinion as follows:—

“That the section is a Public or Provincial Railway is perfectly obvious,” and again “to render it clear beyond a dispute that the section is a Provincial Railway and Public Work; the Statute of 1865 expressly provides that the Government shall at any time take the road entirely into their own hands. As long, therefore, as the Company are allowed to hold, manage, and operate the Railway, it must be considered and looked upon as a Provincial Railway, in the hands and possession of a private company or corporation, who, in consideration of what they have contributed towards its construction, are allowed to have the management of it, and to receive the profits or earnings of it to their own use, subject, however, at any time, to hand it over to the Government, upon receiving reasonable compensation for their outlay in its construction, and other claims upon the property. In this light it may be viewed as a Public Railway in the hands of a private corporation as (*quasi*) Lessees under the Government.”

Fourthly,

They have failed to comply with the provisions of clause 7 of the Agreement, which provides—

“That all lands required for the railway track and appurtenances shall be provided *gratis*,” “as under the provisions of section 11, chapter 70 of the Revised statutes” (already quoted.)

Your memorialists have in one case been sued for a large amount, and have in several instances been threatened with expulsion from the land taken for the Railroad, involving them thereby in considerable litigation and expense. Your memorialists have further never received the land required by them at their Windsor station, although they have, with a view to relieve the Government of expense, agreed, at their request, to receive other lands now in the possession of the Government there, which are, in your memorialists opinion, inferior for their purpose to those originally scheduled by them.

Fifthly,

They have failed in several respects to comply with the provisions of clause 6 of the Agreement, which provides,

“That for the subvention,” “capitalized at the agreed sum of £188,600, sterling,” “the Provincial Bonds, or Debentures, issued in the ordinary form, bearing 6 per cent. interest, shall be delivered at par to the parties of the second part (viz.—the Contractors,) or their assignees or nominees; but such Bonds shall only be delivered with the coupons attached, bearing interest from the preceding 1st of January, or 1st of July, as the case may be, prior to such delivery: such delivery to the said parties shall be within fourteen days from the date of such certificate.”

Your memorialists, almost immediately after they had commenced the work of construction, were informed that the Government would have to substitute cash payments for the Government Bonds. Your memorialists subsequently learned that the inability of the Government to issue the Bonds arose out of a previous contract with the Messrs. Barings, of London. The payments were made in cash in lieu of bonds, and a large discount was moreover insisted upon, and deducted by the Government from the par value. Your memorialists deem themselves entitled, therefore, to receive from the Government the amount not only so deducted, but also of any premium obtained by them upon the Bonds. As the Bonds were to have carried interest as from the preceding

first of January, or first of July, as the case might be, your memorialists were entitled to interest upon cash payments as from those dates to the dates of payment; but not only have your memorialists not received such interest, but they have been still further prejudiced by the cash payments being in all cases delayed considerably after the stipulated time of fourteen days from the dates of the certificates.

Sixthly,

That whilst your memorialists were bound, as they admit, to obtain the concurrence of the Government in the Tolls to be charged by them, it could never have been intended that your memorialists should be charged a higher rate of tolls over the Government line than that charged by the Government to the Public. The fact is, however, that such has been the case for a considerable time past, your memorialists having been so surcharged in respect to cattle, horses, hay, &c., between the stations on the Annapolis road and Halifax, involving a loss of from 20 to 40 per cent. as between your memorialists and the public. The result of this unjustifiable and arbitrary action of the Government representatives has been the total annihilation of an important branch of your memorialists' trade, and great inconvenience to the public.

Seventhly and Lastly,

Your memorialists contend that the first object for which the Railroad was designed, was the formation of a through route across the Province, for the traffic between Halifax and St. John; and they were moreover led to believe that the Government would support your memorialists' efforts to induce such traffic to follow that route. Your memorialists are, therefore, both disappointed and alarmed to find that a line of steamers between Halifax and St. John, direct, and another line of steamers between Windsor and St. John, have been put on under subsidies granted by the Government. Your memorialists believe that the Government can hardly be aware of the fact that the subsidies received by the first mentioned steamers, viz.:—of \$13,000 per annum, are more than sufficient to defray the total cost of their working, and that they, consequently come most unfairly into competition with the Windsor and Annapolis road, to the serious detriment and loss of your memorialists. In the case of the last mentioned steamer, the subvention of from \$3,000 to \$4,000 is nearly equal to the total amount paid to your memorialists for the carriage of the mails and government stores, including a provision of special postal cars run upwards of fifty thousand miles in the year.

Prayer of Memorialists.

19. And finally your memorialists, believing in the just and equitable intentions of the Government, humbly ask for such redress as the circumstances of your memorialists' peculiarly hard case warrant.

Your memorialists urge most strongly that the Government are bound in honor and in fairness

To put in force the powers of purchase conferred upon the Government by clauses 7, 8, and 10 of the Act of the Local Legislature of Nova Scotia, Session 1865, 28 Vic., Cap. 13.

And this your memorialists claim.

Your memorialists, however, venture to submit that, if from any reasons of State or of policy, a compliance with your memorialists' claim be deemed impracticable, then substantial redress should be made to them, either—

- (1) By conveying or transferring to your memorialists the Railroad between Windsor and Waverly Junction, forming, as that does, a part of the Annapolis section of the Railroads of the Province, and which the Act of 1864 clearly enacted should be worked together with the road from Windsor to Annapolis under one management.

- (2) By making all requisite arrangements to permit of your memorialists exercising free and unrestricted running powers over the Government line between the said Waverly Junction and Halifax, including the use of all stations and conveniences now or hereafter to be erected in Halifax.
- (3) By granting fair compensation to your memorialists for the loss and damage caused by the past action of the Government;
- and (4) By granting to your memorialists such an annual grant as will be sufficient, together with the net annual income of such combined Railroads, to pay the interest upon the fixed and floating debts of the Windsor and Annapolis Railway, and a fair return upon the capital embarked by your memorialists;
- or (1) By leasing the Windsor and Annapolis Railroad from your memorialists upon payment of such a fixed or increasing annual rent as will provide for the interest upon the Debenture and floating debts, and give your memorialists a fair return on their capital;
- and (2) By granting fair compensation to your memorialists for the loss and damage caused by the past action of the Government.

And your memorialists will ever pray, &c., &c.

The Windsor and Annapolis Railway Company, Limited,
Under the hand of their lawfully constituted Com-
missioner and Attorney.

JAMES ALEXANDER MANN.

HALIFAX, July, 1871.